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### REMARKS

#### *Telephone Interview Summary*

The Examiner's Interview Summary, showing an interview date of 27 June 2006, indicates that an agreement was not reached between the Examiner and the Applicant's representative, Mr. Ishimaru, regarding a request for permission to do an Examiner's amendment to move the case to issue.

Applicant respectfully submits that the teleconferences on 24 February 2006 and 27 February 2006 did not discuss the merits of the case and a request for a documented Office Action was made based on instructions of the client.

#### *Response to Amendment*

The Examiner stated that Applicant's arguments filed December 8, 2005 with respect to the rejection of claims 1-25 under 35 USC §103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

The Examiner stated further that upon further consideration a new ground(s) of rejection is made.

#### *New Grounds of Rejection*

The Examiner stated that Applicant's amendment and arguments received on October 26, 2005 have been fully considered, however they are deemed to be moot in view of the new grounds of rejection.

It is respectfully submitted that Applicant filed responses on June 24, 2005 and December 8, 2005. The Applicant appreciates the Examiner's hard work and diligence in doing a thorough job in searching this application, but this is the third non-final Official Action on this case and Applicants would like to remind the Examiner that MPEP § 904.02

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strongly encourages the Examiner to perform one thorough search instead of many less-than-thorough searches.

***Claim Rejections - 35 USC §112***

**Claims 1-19 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.**

Since the Examiner has not listed which claims are subject to which rejection, Applicant is left in the dark on how to respond for each claim. Applicant will endeavor to respond so as to move prosecution along.

With regard to "(A) statements of intended use or field of use," claims 1-19 do not appear to contain statements of intended use or field of use. However, in the case of *Ex parte Porter*, 25 USPQ2d 1144 (Bd. Pat. App. & Inter. 1992), the Board held that a claim which clearly recited the step of "utilizing" was not indefinite under 35 U.S.C. 112, second paragraph. (Claim was to "A method for unloading nonpacked,...bead material from the opened end of a reactor tube which comprises utilizing the nozzle of claim 7.")

With regard to "(B) "adapted to" or "adapted for" clauses," these phrases are expressly allowable:

"[L]imitations such as "members adapted to be positioned"...serve to precisely define present structural attributes of interrelated component parts of the claimed assembly." [underlining for clarity] *In re Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976).

With regard to "(C) "wherein" clauses," in *Griffin v. Bertina*, 289 F.3d 1029, 62 USPQ2d (BNA) 1431 (Fed.Cir. 2002), the Court of Appeals for the Federal Circuit (CAFC) held that a "wherein" clause was given limiting effect because it related back to and clarified what the claim required. Thus, the use of this term is approved by the CAFC.

With regard to "(D) "whereby" clauses," in *Griffin v. Bertina, supra.*, the Court also held that those earlier cases that have held that the function stated in a whereby cause cannot

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be considered to determine patentability of a claim have been rejected so that the "whereby" clause is part of the structure or method.

It is respectfully submitted that claims 1-25 are precise, clear, correct, and unambiguous.

***Claim Rejections - 35 USC §102***

Claims 1-12, 14-18, and 20-25 are rejected under 35 U.S.C. §102(e) as being anticipated by Dietz et al. (U.S. Patent No. 6,954,789, hereinafter "Dietz").

As to claim 1, the Examiner states

"As to claim 1, Dietz teaches...:  
a First-In-First-Out (FIFO) buffer (refer to Fig. 11)"

Applicant respectfully disagrees. The buffer shown in Dietz FIG. 11 is a Unified Flow Key Buffer (UFKB) 1103, which is not a FIFO buffer, as disclosed in Dietz col. 23, lines 29-34:

"...packet signatures and payloads that come from the parser into the unified flow key buffer (UFKB) 1103. UFKB is comprised of memory set up to maintain UFKB records. A UFKB record is essentially a parser record; the UFKB holds records of packets that are to be processed or that are in process."

The UFKB holds records and releases them as they are required by the lookup/update engine (LUE) 1107, the state processor (SP) 1108, and the flow insertion and deletion engine (FIDE) 1110, and not first-in-first-out, as explained in Dietz col. 23, lines 37-40:

"Three processing engines run concurrently and access records in the UFKB 1103: the lookup/update engine (LUE) 1107, the state processor (SP) 1108, and the flow insertion and deletion engine (FIDE) 1110."

The Examiner continues:

"[a First-In-First-Out (FIFO) buffer]...adapted to receive the incoming messages..." [insertion and deletions for clarity]

Applicant respectfully disagrees because Dietz col. 23, lines 29-34, quoted above, discloses that the UFKB maintains a parser record of packets and not the incoming messages themselves. This is in keeping with the object of Dietz to "[m]aintain statistics relevant to the

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mix of client/server applications using network resources.” (underlining for clarity, quote from Dietz col. 4, lines 63-64)

The Examiner continues:

“[a First-In-First-Out (FIFO) buffer]...to assemble the incoming messages from a serial to a parallel form...” [insertion and deletions for clarity]

Applicant respectfully disagrees again because Dietz col. 23, lines 29-34, quoted above, discloses that the UFKB maintains a parser record of packets and not the messages themselves.

The Examiner continues:

“(Dietz teaches parsing (serial to parallel conversion) a packet to create a parser record comprising a function of selected portions fo [sic] the packet.”

However, it is respectfully submitted that Dietz teaches parsing in the parser interface 1101 and not in the UFKB. Therefore, the claim limitation of the FIFO buffer assembling the messages from a serial to a parallel form is not met.

The Examiner continues that Dietz teaches:

“[A] regular-expression pattern matching circuit connected to the FIFO buffer,”

Applicant respectfully disagrees because there are only three elements connected to the UFKB and none of the three elements is a regular-expression pattern matching circuit, as shown in Dietz FIG. 11 explained in Dietz col. 23, lines 37-40, quoted above. The three elements are the lookup/update engine (LUE) 1107, the state processor (SP) 1108, and the flow insertion and deletion engine (FIDE) 1110.

Based on the above, it is respectfully submitted that claim 1 is allowable under 35 U.S.C. §102(e) as not being anticipated by Dietz because Dietz does not disclose a FIFO buffer or a regular-expression pattern matching circuit as claimed and because:

“Anticipation requires the disclosure in a single prior art reference disclosure of each and every element of the claim under consideration.” W.L. Gore & Assocs. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983) (citing Soundsciber Corp. v. United States, 360 F.2d 954, 960, 148 USPQ 298, 301 (Ct. Cl.), *adopted*, 149 USPQ 640 (Ct. Cl. 1966)), *cert. denied*, 469 U.S. 851 (1984). Carella v. Starlight Archery, 804 F.2d 135, 138, 231 USPQ 644, 646 (Fed. Cir.), *modified on reh’g*, 1 USPQ 2d 1209 (Fed. Cir.

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1986); RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

**As to claim 2, the Examiner states:**

"As to claim 2, Dietz teaches the network interface as claimed in claim 1 further including: a logic circuit connected to the FIFO buffer, the logic circuit adapted to provide a response message to the client device based on a content of the recognized HTTP message headers (col. 32, lines 38-46 and col. 34, lines 28-33)."

Applicant respectfully disagrees because there are only three elements connected to the UFKB and none of the three elements is a regular-expression pattern matching circuit, as shown in Dietz FIG. 11 explained in Dietz col. 23, lines 37-40, quoted above. The three elements are the lookup/update engine (LUE) 1107, the state processor (SP) 1108, and the flow insertion and deletion engine (FIDE) 1110.

Dietz does not disclose a "logic circuit adapted to provide a response message to the client device based on a content of the recognized HTTP message headers" in Dietz col. 32, lines 38-46, which states:

"FIG. 2 shows how the monitor 300 in the example of Sun RPC builds a signature and flow states. A plurality of packets 206-209 are exchanged, e.g., in an exemplary Sun Microsystems Remote Procedure Call protocol. A method embodiment of the present invention might generate a pair of flow signatures, "signature-1" 210 and "signature--2" 212, from information found in the packets 206 and 207 which, in the example, correspond to a Sun RPC Bind Lookup request and reply, respectively."

Dietz also does not disclose a "logic circuit adapted to provide a response message to the client device based on a content of the recognized HTTP message headers" in Dietz col. 34, lines 28-33, which states:

"Thereafter, the client and server exchange a number of packets, e.g., represented by request packet 208 and response packet 209. The client 106 sends packets 208 that have a destination and source address  $S_1$  and  $C_1$ , in a pair of fields 260 and 261. A field 262 defines the protocol as " $p_2$ ", and a field 263 defines the destination port number."

Based on the above, it is respectfully submitted that claim 2 is allowable under 35 U.S.C. §102(e) as not being anticipated by Dietz because Dietz does not disclose a logic circuit adapted as claimed and because:

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"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" [emphasis added] Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co. (730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984)(citing Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)))

As to claim 3, the Examiner states:

"As to claim 3, Dietz teaches the network interface as claimed in claim 1 wherein: the regular-expression pattern matching circuit is further adapted to provide to the server the parsed HTTP message headers in a compact form (col. 18, lines 25-33)."

Applicant respectfully disagrees. Dietz discloses compaction of the of the pattern recognition database in the server, not providing headers in a compact form to the server, as explained in Dietz col. 18, lines 25-33:

"Because of the large number of possible protocol trees and subtrees, the compiler process 400 includes optimization that compares the trees and subtrees to see which children share common parents. When implemented in the form of the LUT's [Look Up Tables 1870], this process can generate a single LUT from a plurality of LUT's. The optimization process further includes a compaction process that reduces the space needed to store the data of the PRD [pattern recognition database 308]." [insertions and underlining for clarity]

Based on the above, it is respectfully submitted that claim 3 is allowable under 35 U.S.C. §102(e) as not being anticipated by Dietz because Dietz does not disclose a regular-expression pattern matching circuit as claimed and because of the holding in Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., *supra*.

As to claim 4, the Examiner states:

"As to claim 4, Dietz teaches the network interface as claimed in claim 1 wherein: the regular-expression pattern matching circuit is further adapted to provide to the server incoming messages that cannot be recognized by the regular-expression pattern matching circuit (col. 14, lines 44-53)."

Applicant respectfully disagrees. In claim 4, if the regular-expression pattern is not recognized, the message is alternatively sent to the server. In Dietz, every time the flow

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changes, a new identification is assigned to the new flow and the flow is treated the same as the old flow, as explained in Dietz col. 14, lines 44-53:

"If there is no flow-entry found matching the signature, i.e., the signature is for a new flow, then a protocol and state identification process 318 further determines the state and protocol. That is, process 318 determines the protocols and where in the state sequence for a flow for this protocol's this packet belongs. Identification process 318 uses the extracted information and makes reference to the database 326 of state patterns and processes. Process 318 is then followed by any state operations that need to be executed on this packet by a state processor 328." [underlining for clarity]

Based on the above, it is respectfully submitted that claim 4 is allowable under 35 U.S.C. §102(e) as not being anticipated by Dietz because Dietz does not disclose alternate processing or transmission to a server as claimed and because of the holding in Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., *supra*.

As to claim 5, the Examiner states:

"As to claim 5, Dietz teaches the network interface as claimed in claim 1 wherein: the regular-expression pattern matching circuit is implemented by a technique consisting of hardware, software, and a combination thereof (col. 11, lines 50-59)."

Applicant respectfully disagrees. In Dietz, no regular-expression pattern matching circuit hardware and/or software is disclosed, as explained in Dietz col. 11, lines 50-59:

"FIG. 3 shows a network packet monitor 300, in an embodiment of the present invention that can be implemented with computer hardware and/or software. The system 300 is similar to monitor 108 in FIG. 1. A packet 302 is examined, e.g., from a packet acquisition device at the location 121 in network 102 (FIG. 1), and the packet evaluated, for example in an attempt to determine its characteristics, e.g., all the protocol information in a multilevel model, including what server application produced the packet." [underlining for clarity]

Based on the above, it is respectfully submitted that claim 5 is allowable under 35 U.S.C. §102(e) as not being anticipated by Dietz because Dietz does not disclose regular-expression pattern matching circuit hardware and/or software as claimed and because of the holding in Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., *supra*.

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As to claim 6, the Examiner states:

"As to claim 6, Dietz teaches the network interface as claimed in claim 1 wherein: the HTTP message headers include HTTP cookies (col. 14, lines 53-67)."

Applicant respectfully disagrees. In Dietz, there is no disclosure or mention of "HTTP cookies", as evident in Dietz col. 14, lines 54-67, which states:

"If the packet is found to have a matching flow-entry in the database 324 (e.g., in the cache), then a process 320 determines, from the looked-up flow-entry, if more classification by state processing of the flow signature is necessary. If not, a process 322 updates the flow-entry in the flow-entry database 324 (e.g., via the cache). Updating includes updating one or more statistical measures stored in the flow-entry. In our embodiment, the statistical measures are stored in counters in the flow-entry.

If state processing is required, state process 328 is commenced. State processor 328 carries out any state operations specified for the state of the flow and updates the state to the next state according to a set of state instructions obtained from the state pattern and processes database 326."

Based on the above, it is respectfully submitted that claim 6 is allowable under 35 U.S.C. §102(e) as not being anticipated by Dietz because Dietz does not disclose HTTP cookies as claimed and because of the holding in *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, *supra*.

The Examiner concludes:

"Claims 7-12, 14-18 and 20-25 do not teach or define any new limitation above claims 1-6, therefore, they are rejected for similar reasons."

Applicant respectfully disagrees. Claims 7-12, 14-18 and 20-25 are allowable for the same reasons as explained above for claims 1-6 and contain additional allowable limitations.

Based on the above, it is respectfully submitted that claim 6 is allowable under 35 U.S.C. §102(e) as not being anticipated by Dietz because Dietz does not disclose the Applicant's limitations as claimed and because of the holding:

"If the reference fails to teach or suggest even one limitation of the claimed invention, then the claim is not anticipated." *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 750 F.2d 1569, 1574, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).



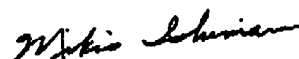
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***Conclusion***

In view of the above, it is submitted that the claims are in condition for allowance and reconsideration of the rejections is respectfully requested. Allowance of claims 1-25 at an early date is solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including any extension of time fees, to Deposit Account No. 08-2025 and please credit any excess fees to such deposit account.

Respectfully submitted,



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